313. The sale confers title good against all the world irrespective of notice. *Young* v. *Kellar*, 94 Mo. 581, 7 S. W. 293; *Betterton* v. *Eppstein*, 78 Tex. 443, 14 S. W. 861. This answers the trustee's objection based on the rule that the filing of the petition in bankruptcy is a *caveat* to all the world and in effect an attachment and injunction. *Mueller* v. *Nugent*, 184 U. S. 1, 22 Sup. Ct. 269; *In re Granite City Bank*, 137 Fed. 818. And moreover this rule has been limited by later decisions mentioned with approval in the principal case. *York Mfg. Co.* v. *Cassell*, 201 U. S. 344, 353, 26 Sup. Ct. 481, 484; *In re Rathman*, 183 Fed. 913, 924, 925. With the element of necessity absent, it is submitted that the trustee should prevail, because, whether the bankruptcy proceedings are a *caveat* or not, the purchaser cannot save himself by the proviso of § 67 f of the Bankruptcy Act, which protects a purchaser for value, who obtains title by an attachment without notice or reasonable cause for inquiry, since the adjudication dissolved the lien and the entire title and interest was vested in the trustee. BANKRUPTCY ACT OF 1898, §§ 67, 70. Therefore the purchaser would take nothing which could be protected.

BANKRUPTCY — PREFERENCE — INSURANCE OF PROPERTY PREFERENTIALLY MORTGAGED, AS A PREFERENCE. — An insolvent company mortgaged property under circumstances rendering the mortgage voidable as a preference under § 60 of the Bankruptcy Act of 1898. An insurance policy was taken out, containing a standard mortgagee clause, and the mortgage provided that if the mortgagee should pay any premiums, the sum so paid should be a further lien on the premises. The mortgagee paid all the premiums. After a loss, the insurance company paid the mortgagee. *Held*, that the mortgagor's trustee in bankruptcy can recover the proceeds of the policy from the mortgagee. *Brown City Savings Bank* v. *Windsor*, 198 Fed. 28 (C. C. A., Sixth Circ.). See NOTES, p. 362.

BILLS AND NOTES — CERTIFIED CHECKS — EFFECT IN DISCHARGING MAKER WHEN CERTIFIED AT HIS INSTANCE. — The drawer of a check procured its certification by the bank before delivering it to the payee. The bank closed the following day and the check was dishonored on presentment. *Held*, that the drawer is liable on the check. *Davenport* v. *Palmer*, 137 N. Y. Supp. 796 (Sup. Ct., App. Div.).

Certification of a check at the instance of the holder discharges the drawer. *Metropolitan National Bank of Chicago* v. *Jones*, 137 Ill. 634, 27 N. E. 533; *First National Bank of Jersey City* v. *Leach*, 52 N. Y. 350. By the great weight of authority, however, the drawer is not discharged when the certification has been at his own instance. *Born* v. *First National Bank of Chicago*, 123 Ind. 78, 24 N. E. 173; *Bickford* v. *First National Bank of Chicago*, 42 Ill. 238. But see *First National Bank of Washington* v. *Whitman*, 94 U. S. 343, 345. Two reasons are advanced for releasing the drawer of a check certified in the holder's hands, while the drawer of a bill of exchange continues secondarily liable after acceptance by the drawee: first, the payee foregoes his right to receive the money due him and takes instead the liability of the bank; second, a certified check is regarded in business practically as a bank note, and as the funds in the bank are beyond the drawer's control presumably the payee does not rely on the drawer's extraordinary liability as surety. The latter reason applies equally to a check certified in the drawer's hands, with such force that the absence of the former reason in addition is not enough to justify the different rules of law. Furthermore, as the instrument is the same on its face in both cases, an indorsee, if the principal case is to be followed, could not know what obligation he is buying, and suit would often have to be brought against the drawer before the facts could be ascertained. See 6 HARV. L. REV. 138. The distinction, however, is embodied in the Negotiable Instruments Law,

§§ 187, 188, which was binding on the court in this case. *Cullinan* v. *Union Surety & Guaranty Co.*, 79 N. Y. App. Div. 409, 80 N. Y. Supp. 58.

BILLS AND NOTES — SET-OFF BY ACCOMMODATED PAYEE OF PROMISSORY NOTE AGAINST INSOLVENT BANK. — The accommodated payee of a promissory note discounted it at the defendant bank which had knowledge of the facts. The bank became insolvent before the note fell due. The payee brought suit in equity to compel the receiver to offset his credit balance in the bank against the amount of the note. *Held*, that the receiver must do so. *Building and Engineering Co.* v. *Northern Bank*, 206 N. Y. 400, 99 N. E. 1044.

If a negotiable instrument is received with knowledge of a suretyship relation between the parties to the instrument, the ordinary rules of suretyship are held to apply in equity. See CHALMERS, BILLS OF EXCHANGE, 7 ed., 224. As between himself and the party accommodated, the accommodating party is in effect a surety. *American National Bank* v. *Junk Brothers*, 94 Tenn. 624, 30 S. W. 753. See *Latimer* v. *Wood*, 73 Fed. 1001, 1002. Accordingly, an extension of time to the accommodated party is held to release the accommodating party. See 2 AMES, CASES ON BILLS AND NOTES, 82, n. 2. And prior to the Negotiable Instruments Law, the New York court would clearly have recognized the accommodated payee as the party primarily liable, with a right of set-off which equity will protect. *Clute* v. *Warner*, 8 N. Y. App. Div. 40; *Scott* v. *Armstrong*, 146 U. S. 499, 13 Sup. Ct. 148. However, sections 119, 120, and 192 of the Negotiable Instruments Law have generally been construed strictly as holding the maker of a note liable thereon without regard to the suretyship relation. *Union Trust Co.* v. *McGinty*, 212 Mass. 205, 98 N. E. 679; *Wolstarholme* v. *Smith*, 34 Utah 300, 97 Pac. 329. *Contra*, *Fullerton Lumber Co.* v. *Snouffer*, 139 Ia. 176, 117 N. W. 50. It has been suggested that the sections in the Negotiable Instruments Law as to suretyship are inadequate and should be entirely omitted. See 59 U. OF PA. L. REV. 542.

CANCELATION OF INSTRUMENTS — INSURANCE POLICY — BREACH OF WARRANTY. — An insured warranted that no company had refused him insurance. He had been rejected by another company, but was ignorant of that fact. Soon after the policy was issued, the insurance company brought a bill to have it canceled, offering to return the premiums. *Held*, that the company is entitled to the relief. *Pacific Mutual Life Ins. Co.* v. *Glaser*, 150 S. W. 549 (Mo.).

Although the court admitted that the breach of warranty rendered the policy invalid, it granted the relief only on the ground that there was a mutual mistake of fact. But those mistakes which the parties expressly provide for are not the kind that equity relieves against. Mistake in itself is a ground for equity jurisdiction only when the plaintiff has become bound by a contract under circumstances which make it inequitable for the other party to enforce it. But in the principal case he has not become bound at all. See 2 POMEROY, EQUITABLE JURISPRUDENCE, § 852. *Cf.* 23 HARV. L. REV. 623. The real reason for cancelation in such a case depends upon the equitable doctrine of *quia timet*. A party whose defense depends upon parol evidence should not be subjected to the danger of future vexation by suit upon a written instrument, particularly a specialty, *primâ facie* valid. *Connecticut Mutual Life Ins. Co.* v. *Home Ins. Co.*, 17 Blatchf. (U. S.) 142; *Cooper* v. *Joel*, 27 Beav. 313. See *Merritt* v. *Ehrman*, 116 Ala. 278, 288, 22 So. 514, 516. *Cf. Fenn* v. *Craig*, 3 Y. & C. Exch. 216. Although insurance warranties are conditions precedent in substance, they are conditions subsequent in form and their breach must be proved affirmatively. *Chambers* v. *Northwestern Mutual Life Ins. Co.*, 64 Minn. 495, 67 N. W. 367; *O'Connell* v. *Supreme Conclave Knights of Damon*, 102 Ga. 143, 28 S. E. 282.